

Message Text

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ACTION EB-08

INFO OCT-01 ARA-10 ISO-00 CIAE-00 COME-00 DODE-00
DOTE-00 FMC-01 INR-07 NSAE-00 CG-00 DLOS-09
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FM AMCONSUL RIO DE JANEIRO
TO SECSTATE WASHDC IMMEDIATE 5753
INFO AMEMBASSY BRASILIA
AMCONSUL SAO PAULO

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DEPARTMENT PASS MARITIME ADMINISTRATION

E.O. 11652: N/A
TAGS: EWWT, BR
SUBJECT: BRAZILIAN SUPREME COURT DECISION ON SHIPPING
(MARITIME AFFAIRS)

REF: (A) BRASILIA 0235; (B) BRASILIA 0236;
(C) STATE 012652

1. INFORMATION RECEIVED HERE INDICATES THAT THE MINISTER
PRESIDENT OF THE SUPREME COURT, IN AN UNPRECEDENTED MOVE,
HAS SUSPENDED ANY FURTHER EXECUTION OF THE ORDER FREEZING
STEAMSHIP COMPANY BANK ACCOUNTS AND PLACING LIENS ON
THEIR PROPERTIES. THE EFFECT OF THIS LATEST ORDER
PREVENTS THE SPREADING OF THE ORIGINAL ORDER BEYOND RIO
DE JANEIRO, AND ALTHOUGH BANK ACCOUNTS AND PROPERTIES
ALREADY ENCUMBERED REMAIN SO, NEWLY DEPOSITED FUNDS WILL
NOT BE FROZEN NOR WILL ADDITIONAL LIENS BE EXECUTED.
WE UNDERSTAND THAT THIS ACTION WAS ACCOMPLISHED PURSUANT
TO AN AMENDMENT OF THE CONSTITUTION WHICH GRANTS TO
THE SUPREME COURT POWER TO SUSPEND ANY COURT
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DECISION WHERE EXECUTION THERE OF WOULD ENDANGER THE
NATIONAL PUBLIC ORDER, SECURITY, OR FINANCES.

2. REQUEST FOR SUSPENSION OF THE ORIGINAL ORDER
WAS PRESENTED DIRECTLY TO THE PRESIDENT OF THE
SUPREME COURT WHO ACTED UNDER AN AD REFERENDUM
(TO BE AFFIRMED OR DENIED LATER BY THE COURT IN

SESSION), IN WHICH CASE HE TAKES FULL RESPONSIBILITY FOR THE SUSPENSION.

3. AN ACAO RECISORIA, WHICH THE LINES PARTIES TO THE ORIGINAL ORDER HAVE ALREADY AGREED TO FILE, PETITIONS THE SUPREME COURT TO MEET IN PLENARY SESSION TO RECONSIDER THE DECISION OF ONE SECTION OF THE COURT. IT WAS EXPLAINED TO US THAT THE SUPREME COURT IS COMPOSED OF SEVERAL SEPARATE DIVISIONS, EACH CONSISTING OF A NUMBER OF JUDGES, UNDER AN "ACAO RECISORIA," THE PRESIDENT OF THE COURT, AFTER RECOGNIZING THAT A PARTICULAR DIVISION MAY HAVE ERRED IN ITS DECISION, CONVENES THE ENTIRE COURT IN PLENARY SESSION TO REHEAR THE CASE AND, IF APPROPRIATE, TO OVERRULE THE ORIGINAL DECISION.

4. WE UNDERSTAND THAT, CONTRARY TO OUR REPORT IN REF. (A), THE SUPREME COURT WILL REMAIN RECESSED UNTIL LATE FEBRUARY/EARLY MARCH AND THAT THE PRESIDENT MINISTER OF THE COURT, THOMPASON FLORES, WHO IS CURRENTLY ON VACATION AT A FARM IN THE STATE OF RIO GRANDE DO SUL, ACCEPTED AND AGREED TO THE PETITION OF THE PROCURADOR GERAL DA REPUBLICA (ATTORNEY GENERAL) TO SUSPEND THE COURT ORDER CURRENTLY IN EFFECT AT RIO DE JANEIRO BASED ON THE "INCREDIBLE" MANNER IN WHICH IT WAS EXECUTED AND LIMITED OFFICIAL USE

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THE "UNREASONABLE" AMOUNT ASSESSED AS DAMAGES, AMONG OTHER THINGS. THE SUSPENSION, OR STAY, HOWEVER, DOES NOT EFFECT THE RULING ON THE MERITS OF THE CASE. IT IS HOPED THAT WHEN THE COURT RESUMES SESSIONS LATE FEBRUARY/EARLY MARCH THAT IT CAN BE CLEARLY DEMONSTRATED THAT THE ORDER AS ORIGINALLY ISSUED IS "IMPOSSIBLE TO EXECUTE" AND IF NOT CANCELLED OUTRIGHT ONLY A NOMINAL AMOUNT OF DAMAGES SHOULD BE ASSESSED.

5. SPOKEMEN FOR U.S. CARRIERS HAVE INDICATED THAT A DECISION UNDER THE FILED "ACAO RECISORIA" MAY RESULT IN A SOLUTION FAVORABLE TO THE LINES PARTIES TO THE ACTION. ALTHOUGH IT GENERALLY TAKES FROM TWO TO EIGHT YEARS TO REACH A DECISION THROUGH THIS TYPE OF PROCEEDING, WE WERE INFORMED THAT DUE TO THE "EMERGENCY" NATURE OF THE SITUATION, AN EXPEDITED DECISION SHOULD BE RENDERED BY THE END OF 1978.

6. A SPOKESMAN FOR MOORE-MCCORMACK LINES SAID THAT AN "EMBARGO" ACTION WAS FILED ON JANUARY 19 WITH THE ORIGINAL COURT TO RELEASE BANK ACCOUNTS

AND PROPERTIES NOW UNDER ENCUMBRANCES. IT IS
HOPED THAT A FAVORABLE DECISION WILL BE RENDERED
WITHOUT DELAY TO RESTORE THESE FUNDS AND PROPERTIES.

7. CONSENSUS OF U.S. FLAG LINES HERE IS THAT
PROCEEDINGS NOW UNDERWAY TO REMEDY THE CURRENT
POSITION WILL BE SUCCESSFUL. SPOKESMEN FOR THE
LINES CAUTIONED THAT NO PRECIPITOUS ACTION SHOULD
BE TAKEN BY THE U.S. GOVERNMENT AT THIS TIME SINCE
"WE ARE DEALING WITH A VERY DELICATE MATTER" AND
ANY ACTION WHICH COULD FURTHER AGGRAVATE THE
SITUATION SHOULD BE AVOIDED.

8. WE HAVE OBTAINED A COPY OF THE PETITION TO
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STOP FURTHER EXECUTION OF THE ORIGINAL ORDER AS
PRESENTED TO THE PRESIDENT MINISTER OF THE SUPREME
COURT BY THE ATTORNEY GENERAL. COPY OF THE PETITION,
WITH FREE TRANSLATION, WILL BE POUCHED TO THE
DEPARTMENT WITHOUT DELAY.

9. EMBASSY CONCURS.

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